



APPENDIX

**Relevant Parts of Constitutional and Statutory
Provisions, State and Federal, Cited in
Brief and Petition**

ACT OF CONGRESS, JANUARY 26, 1870.**(16 Stat. 62)**

Whereas the people of Virginia have framed and adopted a constitution of State government, which is republican; and whereas the legislature of Virginia, elected under said constitution, have ratified the fourteenth and fifteenth amendments to the Constitution of the United States; and whereas the performance of these several acts, in good faith, was a condition precedent to the representation of the state in congress:

Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled that the said State of Virginia is entitled to representation in the Congress of the United States: Provided,

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And provided further, that the State of Virginia is admitted to representation in Congress as one of the States of the Union, upon the following fundamental conditions:

First. That the Constitution of Virginia shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote, who are entitled to vote by the Constitution herein recognized, except as a punishment for such crimes as are now felonies at common law, whereof they shall have been duly convicted under laws equally applicable to all the inhabitants of said state: *Provided*, that any alteration of said Constitution, prospective in its effects, may be made in regard to the time and place of residence of voters.

Second. That it shall never be lawful for the said State to deprive any citizen of the United States, on account of his race, color or previous condition of servitude, of the right to hold office under the constitution and laws of said State, or upon any such ground to require of him any other qualifications for office than such as are required of other citizens.

TITLE 8, U. S. C., SECTION 44.

"Sec. 44. Exclusion of jurors on account of race or color. No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State, on account of race, color or previous condition of servitude; and any officer or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen for the cause aforesaid, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than \$5,000. Mar. 1, 1875, c. 114, sec. 4, 18 Stat. 336)"

CONSTITUTION OF VIRGINIA OF 1902 AS AMENDED.*

§ 18. Qualification of voters.—Every citizen of the United States, twenty-one years of age, who has been a resident of the State one year, of the county, city, or town, six months, and of the precinct in which he offers to vote, thirty days next preceding the election in which he offers to vote, has been registered, and has paid his State poll taxes, as hereinafter required, shall be entitled to vote for members of the general assembly and all officers elective by the people; but removal from one precinct to another, in the same county, city or town shall not deprive any person of his right to vote in the precinct from which he has moved until the expiration of thirty days after such removal.

§ 19. Registration of voters; those registered prior to nineteen hundred and four.—Persons registered under the general registration of voters during the years nineteen hundred and two and nineteen hundred and three, whose

* Text is that appended to Virginia Code of 1936. There are no substantial changes from text of Constitution of 1902 as originally enacted.

names were required to be certified by the officers of registration for filing, record and preservation in the clerks' offices of the several circuit and corporation courts, shall not be required to register again, unless they shall have ceased to be residents of the State, or became disqualified by section twenty-three.

§ 20. Who may register.—Every citizen of the United States, having the qualifications of age and residence required in section eighteen, shall be entitled to register, provided:

First. That he has personally paid to the proper officer all State poll taxes legally assessed or assessable against him for the three years next preceding that in which he offers to register; or, if he come of age at such time that no poll tax shall have been assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents, in satisfaction of the first year's poll tax assessable against him; * * *

§ 21. Conditions for voting.—A person registered under the general registration of voters during the years nineteen hundred and two and nineteen hundred and three, or under the last section, shall have the right to vote for all officers elective by the people, subject to the following conditions:

That unless exempted by section twenty-two, he shall, as a prerequisite to the right to vote, personally pay, at least six months prior to the election, all State poll taxes assessed or assessable against him, under this Constitution, during the three years next preceding that in which he offers to vote. * * *

POLLARDS VIRGINIA CODE 1904.

Sec. 62. Qualification of voters; disqualifications. Every male citizen of the United States twenty-one years old, who has been a resident of the State two years, of the county, city or town one year, and of the precinct in which he offers to vote thirty days next preceding the election, and who has been duly registered and has paid his State poll tax, as required by law, and is otherwise qualified under the Constitution and laws of this State, shall be entitled to vote for members of the general assembly and all officers elected by the people, and in any special election the local-option election in any county, district, city or town, except when otherwise provided by law; * * *

Sec. 73. Who to be registered. Each registrar shall, after the first day of January, nineteen hundred and four, register every male citizen of the United States, of his election district, who shall apply to be registered at the time and in the manner required by law, who shall be twenty-one years of age at the next election, who has been a resident of the State two years, of the county, city or town one year, and of the precinct in which he offers to register thirty days next preceding the election, who, at least six months prior to the election, had paid to the proper officer all State poll-taxes assessed or assessable against him under this or the former Constitution for three years next preceding that in which he offers to register, or if he come of age at such time that no poll-tax shall be assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents in satisfaction of the first year's poll-tax assessable against him, * * *

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Sec. 86b. Lists of all persons who have paid their poll taxes; posting the same; compensation therefor. (1) The treasurer of each county and city shall, at least five months before each regular election, file with the circuit court of his county, or of the corporation court of his city, a list

of all persons in his county or city who have paid not later than six months prior to such election the State poll taxes required by the Constitution of this State during the three years next preceding that in which such election is held, which list shall be arranged alphabetically by magisterial districts or wards, shall state the white and colored persons separately, and shall be verified by the oath of the treasurer. The clerk, within ten days from the receipt of the list, shall make and certify a sufficient number of copies thereof, and shall deliver one copy for each voting place in his county or city to the sheriff of the county or sergeant of the city, whose duty it shall be to post one copy, without delay, at each of the voting places, and, within ten days from the receipt thereof, to make return on oath to the clerk as to the places where and the dates at which said copies were respectively posted; which return the clerk shall record in a book kept in his office for the purpose; and he shall keep in his office for public inspection, for at least sixty days after receiving the list, not less than ten certified copies thereof.

(2) Within thirty days after the list has been so posted any person who shall have paid his capitation tax, but whose name is omitted from the certified list, may, after five days' written notice to the treasurer, apply to the circuit court of his county, or corporation court of his city, or to the judge thereof in vacation, to have the same corrected and his name entered thereon, which application the court or judge shall promptly hear and decide.

(3) The clerk shall deliver, or cause to be delivered, with the poll books, at a reasonable time before every election, to one of the judges of election of each precinct in his county or city, a like certified copy of the list, which shall be conclusive evidence of the facts therein stated for the purpose of voting. The clerk shall also, within sixty days after the filing of the list by the treasurer, forward a certified copy thereof, with such corrections as may have been made by order of the court or judge, to the auditor of public accounts, who shall charge the amount of the poll

taxes stated therein to such treasurer, unless previously accounted for.

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Sec. 86c. Furnishing by the county treasurers of list of those who are residents of or voters in the incorporated towns who have paid their State capitation taxes six months prior to a regular election to be held in the incorporated towns of which they are residents. The treasurer of every county in this Commonwealth in which any incorporated town is located, in which a regular election is to be held on the second Tuesday in June in any year in pursuance of law, shall furnish the clerk of the circuit court of his county with a list of the residents of said incorporated town who have paid the State capitation tax provided by law six months prior to the time of holding said election. The said lists shall be prepared and posted in all respects as is provided for in section thirty-eight of the Constitution. The said treasurers shall not for the purpose of this act be required to furnish or post list of those voters of his county who have paid their capitation taxes six months prior to the second Tuesday in June unless they are voters in and residents of some incorporated town in which an election is to be held. . . .

Sec. 86d. Evidence of the prepayment of State poll taxes by voters transferred from one city or county to another city or county. In any case where a voter has been transferred from one city or county to another city or county, and has paid his State poll taxes for the three years next preceding that in which he offers to vote, or for any of said years, in any county or city in this State, such voter may exhibit to the judges of election the certificate of the treasurer of the city or county wherein the said taxes were paid, showing such payment, and that the same was made at least six months prior to the election, by the person offering to vote, such certificate shall be conclusive evidence of the facts therein stated for the purpose of voting. The treasurer of any county or city, upon the application of any such voters, shall furnish the certificate herein required. . . .

Sec. 86e. Manner in which a duly registered voter who has not been assessed with his State capitation tax may pay the same, penalties for failure on the part of clerks and treasurers to observe the law. If any duly registered voter in any city or county in this Commonwealth apply to the treasurer of such city or county to pay his State capitation tax, and such treasurer is prevented from receiving such tax because the same has not been assessed against such applicant, such duly registered voter may thereupon apply to the county clerk of his county, or the clerk of the corporation or hustings court of his city, as the case may be, for a certificate that he is a duly registered voter. The clerk shall deliver such certificate to the applicant forthwith and deliver a copy thereof to the commissioner of the revenue, and upon presentation of such certificate to the treasurer of the county or city the treasurer shall accept payment of such State capitation tax from such voter and give a receipt therefor. * * *

Sec. 3139. Who liable to serve as jurors.—“All male citizens over twenty one years of age who shall have been residents of this State two years, and of the county, city, and town in which they reside one year next preceding their being summoned to serve as such, and competent in other respects, except as hereinafter provided, shall remain and be liable to serve as jurors. * * *”

Sec. 3142. Judges of circuit and corporation courts to prepare annual lists of jurors.—The judge of the circuit court of each county and the judge of the circuit court of each city of the first class, and the judge of each city court shall annually, between the first day of January and the first day of July, prepare a list of such inhabitants in each county or corporation where their respective courts are to be held, as are not excluded or exempt by section thirty one hundred and forty, as are well qualified to serve as jurors. Such list shall contain one for every one hundred inhabitants of each magisterial district or ward, having regard to the population of the

county or corporation, but the whole number of persons selected in the county or corporation shall not be less than one hundred nor more than three hundred, except in the courts for the cities of Richmond and Norfolk the number shall not exceed six hundred. (1870-71, P. 50; 1899-00, P. 997; 1902-3-4, P. 603.)

Sec. 3143. Lists to be delivered to clerks, and by them safely kept. The list so prepared shall be delivered to the clerk of the court, to be safely kept by him, subject only to the inspection of the judge, as hereinafter provided; and to such list the judge may, from time to time, add the names of any persons liable to serve, and strike therefrom the names of any who have become disqualified or exempt from such service: provided, that the number on the list shall not at any time exceed three hundred, except in the cities of Richmond and Norfolk, and in said cities shall not exceed six hundred. (1870-71, p. 51; 1902-3-4, p. 603.)

Sec. 3144. Names of jurors to be written on separate ballots; ballots to be folded and deposited with list in a box. When such list is made out, the judge shall cause all the names thereon to be fairly written, each on a separate paper or ballot, and shall so fold or roll up the ballots that they will resemble each other as nearly as may be, and the names written thereon not be visible on the outside, and shall deposit the ballots with the said list in a secure box prepared for that purpose, and the said box shall be locked and safely kept by the clerk of such court and opened only by order of the judge thereof, as hereinafter provided. (1870-71, p. 51; 1899-00, p. 1012; 1902-3-4, p. 603.)

Sec. 3976. When and how grand jurors to be selected by judges of circuit courts of counties and corporation or hustings courts of cities; lists to be delivered to clerk; when and how jurors summoned.—The judges of the said courts shall annually, in the month of June, July, or August, select from the male citizens of each county of their

respective circuits and in their several cities forty eight persons twenty-one years of age and upwards, of honesty, intelligence, and good demeanor, and suitable in all respects to serve as grand jurors, who shall be the grand jurors for the county or city from which they are selected for twelve months thereafter. Such jurors shall be selected in each county from the several magisterial districts of the county and from the several wards of the cities in proportion to the population thereof, and the judge making the selection shall at once furnish a list of those selected to the clerk of his court in each county of his circuit or in his city. The clerk, not more than twenty days before the commencement of each term of his court at which a regular grand jury is required, shall issue a venire facias to the sheriff of his county or sergeant of his city, commanding him to summon twelve of the persons selected as aforesaid to be named in the writ to appear on the first day of the court, to serve as grand jurors. * * *

Sec. 3977. Who are qualified; number of grand jury, regular and special.—A regular grand jury shall consist of not less than nine nor more than twelve persons, and a special grand jury of not less than six nor more than nine persons. Each grand juror shall be a citizen of this state, twenty-one years of age, and shall have been a resident of this state two years, and of the county or corporation in which the court is to be held one year, and in other respects a qualified juror, and not a constable, ordinary keeper, overseer of a road, and not the owner or occupier of a grist-mill, and, when the grand juror is for a circuit court of a county, not an inhabitant of a city. (1877-8, P. 331; 1889-90, P. 91; 1902-3-4, P. 878.)

Sec. 4018. The venire facias in case of felony: what to command; number of persons to be summoned, and how selected.—The writ of venire facias, in case of felony, shall command the officer to whom it is directed to summon sixteen persons of his county or corporation, to be taken from a list furnished him by the clerk issuing the writ, who are

qualified in all respects to serve as jurors, to attend the court wherein the accused is to be tried on the first day of next term thereof, or at such other time as the court or judge may direct. At one term of the court only one jury shall be summoned, unless the court or judge thereof otherwise direct; and the jury so summoned may be used for the trial of all the cases which may be tried at that term, both felonies or misdemeanors.

The list mentioned in this section shall contain the names of twenty persons drawn for that purpose by the clerk of the court or his deputy from the names and box provided for by sections thirty one hundred and forty two and thirty one hundred and forty four of the Code of Virginia. * * *

VIRGINIA CODE OF 1936.

§ 109. List of all persons who have paid their State poll taxes shall be made by treasurer; duties of clerk in reference thereto; posting thereof by the sheriff or sergeant.—The treasurer of each county and city shall, at least five months before the second Tuesday in June in each year in which a regular June election is to be held in such county or city, and at least five months before each regular election in November, file with the clerk of the circuit court of his county or the corporation court of his city a list of all persons in his county, or city, who have paid not later than six months prior to each of said dates the State poll taxes required by the Constitution of this State during three years next preceding that in which such election is to be held, which list shall state the white and colored persons separately, and shall be verified by the oath of the treasurer. The clerk within ten days from the receipt of the list, shall make and certify a sufficient number of copies thereof, and shall deliver one copy for each voting place in his county or city to the sheriff of the county or sergeant of the city, whose duty it shall be to post one copy without delay, at each of the voting places and within ten days

from the receipt thereof to make return on oath to the clerk as to the places where and dates at which said copies were respectively posted; which return the clerk shall record in a book kept in his office for the purpose; and he shall keep in his office for public inspection, for at least sixty days after receiving the list, not less than ten certified copies thereof. (1904, p. 131; 1908, p. 162; 1924, p. 57; 1926, p. 525; 1928, pp. 713, 714; 1934, p. 73.)

§ 110. Correction of lists.—Within thirty days after the list has been so posted any person who shall have paid his capitation tax, but whose name is omitted from the certified list, may, after five days' written notice to the treasurer, apply to the circuit court of his county, or corporation court of his city, or to the judge thereof in vacation, to have the same corrected and his name entered thereon, which application the court or judge shall promptly hear and decide. If it be decided that the name was improperly omitted, the judge shall enter an order to that effect and the clerk of the court shall correct the list furnished him by the treasurer accordingly, and deliver a certified copy of such corrected list to the judges of election at the precinct at which such voter is registered. It shall be the duty of the treasurer to revise said list within ten days after it has been posted as aforesaid and to correct any omissions or clerical or typographical errors. (1904, p. 131; 1908, p. 162; 1926, p. 99.)

§ 111. Duty of clerk to deliver lists with poll books, and to forward copies to Auditor.—The clerk shall deliver, or cause to be delivered, with the poll books at a reasonable time before every election, to one of the judges of election of each precinct in his county or city, a like certified copy of the list, which shall be conclusive evidence of the facts therein stated for the purpose of voting. The clerk shall also, within sixty days after the filing of the list by the treasurer, forward a certified copy thereof, with such corrections as may have been made by order of the court or judge, to the Auditor of Public Accounts, who shall charge the amount of the poll taxes stated therein to such treas-

urer, unless previously accounted for. (1904, p. 131; 1908, p. 162.)

§ 4852. **When and how grand jurors to be selected by judges of circuit courts of counties and corporation or hustings courts of cities; lists to be delivered to clerk; when and how jurors summoned.**—The judges of the said courts shall annually, in the month of June, July, or August, select from the male citizens of each county of their respective circuits and in their several cities forty-eight persons twenty-one years of age and upwards, of honesty, intelligence, and good demeanor, and suitable in all respects to serve as grand jurors who shall be the grand jurors for the county or city from which they are selected for twelve months next thereafter. Such jurors shall be selected in each county from the several magisterial districts of the county, and in each city from the several wards of the cities in proportion to the population thereof, and the judge making the selection shall at once furnish to the clerk of his court in each county of his circuit or in his city a list of those selected for that county or city. The clerk, not more than twenty days before the commencement of each terms of his court, at which a regular grand jury is required, shall issue a *venire facias* to the sheriff of his county, or sergeant of his city, commanding him to summon not less than five nor more than seven of the persons selected as aforesaid (the number to be designated by the judge of the court by an order entered of record) to be named in the writ, to appear on the first day of the court to serve as grand jurors. No such person shall be required to appear more than once until all the others have been summoned once, nor more than twice until the others have been twice summoned, and so on; provided, that no male citizen over sixty years of age shall be compelled to serve as a grand juror. The clerk, in issuing the *venire facias*, shall apportion the grand jurors, as nearly as may be ratably among the magisterial districts or wards; but the circuit court of James City county, or the judge thereof in vacation, shall select the grand jurors for such court from said county and the city of Williams-

burg in such proportion from each as he may think proper. (Code 1887, § 3976; 1899-90, p. 90; 1902-3-4, pp. 22, 878; 1932, p. 813; 1934, p. 80.)

§4853. Who are qualified; number of grand jurors, regular and special.—A regular grand jury shall consist of not less than five nor more than seven persons, and a special grand jury of not less than five nor more than seven persons. Each grand juror shall be a citizen of this State, twenty-one years of age, and shall have been a resident of this State two years, and of the county or corporation in which the court is to be held one year, and in other respects a qualified juror, and not a constable, or overseer of a road, and, when the grand juror is for a circuit court of a county, not an inhabitant of a city, except in those cases where the circuit court of the county has jurisdiction in the city, in which case the city shall be considered as a magisterial district, or the equivalent of a magisterial district, of the county for the purpose of the jury lists. (Code 1887, § 3977; 1899-90, p. 91; 1902-3-4, p. 878; 1916, p. 764; 1920, p. 597; 1932, p. 814.)

§ 4895. Venire facias in case of felony; what to command; number of persons to be summoned, and how selected; irregularities; venire, when persons jointly indicted for a felony elect to be tried separately.—The writ of venire facias in case of felony shall command the officer to whom it is directed to summon twenty persons of his county or corporation, to be taken from a list furnished him by the clerk issuing the writ, who are qualified in all respects to serve as jurors, to attend the court wherein the accused is to be tried on the first day of the next term thereof, or at such other time as the court or judge may direct. At one term of the court only one jury shall be summoned, unless the court or judge thereof otherwise direct; and the jury so summoned may be used for the trial of all the cases which may be tried at that term, including civil cases as well as felonies and misdemeanors.

The list mentioned in this section shall contain the names of twenty-four persons drawn for that purpose by the clerk

of the court or his deputy from the names and box provided for by sections fifty-nine hundred and eighty-eight and fifty-nine hundred and ninety of this code. • • •

§ 5984. Who liable to serve as jurors.—All male citizens over twenty-one years of age who shall have been residents of this State one year, and of the county, city or town in which they reside six months next preceding their being summoned to serve as such, and competent in other respects, except as hereinafter provided, shall remain and be liable to serve as jurors; but no officer, soldier, seaman, or marine of the United States army or navy shall be considered a resident of this State by reason of being stationed herein, nor shall an inmate of any charitable institution be qualified to serve as juror. The following persons shall be disqualified from serving as jurors; First, idiots and lunatics: second, persons convicted of bribery, perjury, embezzlement of public funds, treason, felony, or petit larceny. (Code 1887, § 3139; 1891-2, p. 209; 1895-6, p. 49; 1902-3-4, pp. 10, 288, 602; 1930, p. 624; 1936, p. 379.)

§ 5988. List of jurors to be prepared by the jury commissioners.—Such commissioner, shall as soon as may be after their appointment, prepare a list of such of the inhabitants of that county or city as are well qualified to serve as jurors and are not excluded or exempt by sections fifty-nine hundred and eighty-four and fifty-nine hundred and eighty-five of this Code. The whole number of persons selected in the county or city shall not be less than one hundred nor more than three hundred, except that for the city of Richmond and the city of Norfolk the number shall not exceed one thousand and the corporation court for the city of Roanoke, the number shall not exceed six hundred, and for the city of Newport News and the city of Petersburg the number shall not exceed five hundred. The same percentage of population shall be taken from each magisterial district or ward. The inhabitants of a city, however, which is situated in whole or in part within the bounds of a county shall not be placed on the lists for such county; except in those cases where the circuit court

of the county has jurisdiction in the city in which cases the city shall be considered as a magisterial district, or the equivalent of a magisterial district, of the county for the purposes of the jury lists. (Code 1919, § 5988; 1918, p. 505; 1920, pp. 3, 595; 1924, p. 129.)

§ 5989. Lists to be delivered to clerks, and by them safely kept.—The list so prepared shall be delivered to the clerk of the court, to be safely kept by him. To such list the commissioners may from time to time, add the names of any persons liable to serve, and strike therefrom the names of any who have become disqualified or exempt from such service, but the number on the list shall not at any time exceed the number prescribed by the preceding section.

§ 5990. Names of jurors to be written on separate ballots; ballots to be folded and deposited with list in a box.—When such list is made out, the commissioners shall cause all the names thereon to be fairly written, each on a separate paper or ballot, and shall so fold or roll up the ballots that they will resemble each other as nearly as may be, and the names written thereon not be visible on the outside, and shall deposit the ballots with the said list in a secure box prepared for that purpose, and the said box shall be locked and safely kept by the clerk of such court and opened only by the direction of the judge thereof, as hereinafter provided.

TAX CODE (VIRGINIA CODE, 1904).

Sec. 4. The classification under Schedule A shall be as follows—to wit: first, the number of white male inhabitants who have attained the age of twenty-one years, except those pensioned by this State for military service; second, the number of colored male inhabitants who have attained the age of twenty-one years, except those pensioned by this State for military service.

Sec. 5. Tax of persons. Upon every male person, classified in schedule A, there shall be a tax of \$1.50, of which

\$1.00 shall be for aid of the public free schools, and fifty cents shall be returned and paid into the treasury of the county or city in which it shall be collected.

TAX CODE (VIRGINIA CODE, 1936).

Sec. 22. Levy of state capitation tax. There is hereby levied a state capitation tax of one dollar and fifty cents per annum on every resident of the State not less than twenty-one years of age, except those pensioned by the State for military services; one dollar of which shall be applied exclusively in aid of the public free schools, in proportion to the school population, and the residue shall be returned and paid by the State into the treasury of the county or city in which it was collected, to be appropriated by the proper county or city authorities to such county or city purposes as they shall respectively determine; but said State capitation tax shall not be a lien upon nor collected by legal process from, the personal property which may be exempt from levy or distress under the poor debtor's law.